

## **REMARKS**

Applicant intends this response to be a complete response to the Examiner's **01 August 2006** Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

### ***Status of the Application***

1. Claims 1-38 have been examined in this application. This Final Office Action is in response to the "Amendments" and "Remarks" filed on June 13, 2006.

### ***Rejections under 35 USC § 103***

3. **Claims 1-2, 4-12, 14-22, 24-27, 29-34 and 36-38** are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,496,804 to McEvoy in view of US Patent Number 6,634,481 to Humphrey and in further view of US Patent Number 5,832,449 to Cunningham (from the applicant's Information Disclosure Statement (IDS)).

4. **Claim 3** stands rejected under 35 U.S.C. 103(a) as being unpatentable over McEvoy in view of Humphrey and Cunningham as applied to Claim 2, above, and in further view of US Patent Number 5,666,490 to Gillings.

(B) As per claims 23, 28 and 35, these claims repeat features previously addressed in the rejection of claims 1-14 and are rejected on the same basis.

5. **Claim 13** stands rejected under 35 U.S.C. 103(a) as being unpatentable over McEvoy in view of Humphrey and Cunningham, as applied to Claim 1, above.

Applicant traverses each of the rejections and requests reconsideration.

### ***Argument***

Central to each of the rejections above is the combination of McEvoy and Humphrey. Applicant submits that even if such a combination were proper, McEvoy and Humphrey do not teach those portions of applicant's subject matter alleged by the Examiner.

Firstly, the examiner contends that McEvoy relates to any product in view of McEvoy Col 1, 12-20. Applicant does not believe that McEvoy can be so read. McEvoy purports to relate to creating lists of desirable motivated customers and, to do so, collects names and other customer data through mass-market coupon advertising campaigns. When read in context, the statement does not lend itself to pharmaceutical marketing.

Applicant submits that McEvoy Col 1, 50- Col 2, 18 is more instructive. McEvoy is directed to "consumer products" as mentioned throughout this description and to obtaining names and address of consumer product customers (among other marketing data for a coupon

program) to sell more products to such customers (Col 2 51-58). McEvoy does not suggest using its method to distribute pharmaceutical drug samples to patients where it is necessary to attend at a doctor (prescriber) and obtain a prescription. The advertising and distribution of prescription drugs is highly controlled and prescribed to those in need only. Such are not akin to the consumer products discussed in McEvoy.

The examiner contends that it would have been obvious for one skilled in the art to have modified the method of McEvoy so that products were distributed by tokens rather than coupons, as per Humphrey, with a motivation of developing a system which is better enabled to account for the product samples dispersed and minimize pilferage by dispensing employees.

Applicant repeats that its token and method are nothing like the token and method described by Humphrey. And as such even if McEvoy and Humphrey were combined, for example, using improper hindsight, the combination does not teach the subject matter of the present application.

Humphrey describes mechanical tokens for operating a controlled release dispensing apparatus, such as a cigarette dispenser, by an employee. Humphrey is motivated by concerns of employee theft of open product and by serving underage customers at self-serve dispensing machines. To address these issues, unique and controlled tokens are used. The tokens in Humphrey are not distributed to or otherwise given to customers. Rather, they are maintained within the control of the retailer. The employee/attendant receives an order, (perhaps verifying the buyer's age) and selects a token and fits it into the dispensing apparatus to obtain the product purchased. In this way, token counts can be used as a check on employee/attendant pilfering. If tokens were distributed to customers to operate self-serve dispensers, tokens could leave the premises and the count of money, tokens and product on hand could not be used to verify the honesty of the employee. As well, an underage person could return and use the token. The Examiner's attention is directed to Humphrey, Col 5, 9-43. As the token of Humphrey is more akin to a key, its form and use are not equivalents of the subject matter of the present application. There can be no motivation to combine Humphrey and McEvoy as Humphrey's token is not distributed. Distribution defeats the purpose of Humphrey.

To the combined teachings of McEvoy and Humphrey the examiner further combines Cunningham. Without prejudice to Applicant's right to make further argument on this point, Applicant submits that since McEvoy and Humphrey do not teach aspects of Applicant's

invention, the addition of Cunningham does not assist in the teaching either.

***Summary***

In sum, Applicant submits that the Examiner's cited art neither alone, nor in combination, disclose the Applicant's invention as presently claimed. For all of the reasons set out above, Applicant respectfully submits that the application in its present form is in condition for allowance and action toward that goal is respectfully requested.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Jonathan Pollack at 416.862.5405.

Date: January 31, 2007

Respectfully submitted,

/Jonathan Pollack/

Jonathan Pollack

Reg. No. 49,065